

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



Via Certified Mailing – Return Receipt

December 30, 2013

Ron Davis, Warden
Valley State Prison
P.O. Box 99
Chowchilla, CA 93610-0099

Jeffrey A. Beard, Ph.D., Secretary
California Dept. of Corrections and Rehabilitation
P.O. Box 942883
Sacramento, CA 94283-0001

Re: Notice of Violations and Intent to File Suit Under the Safe Drinking Water Act

To Whom it May Concern:

NOTICE

The Safe Drinking Water (“SDWA” or “Act”) §300j-8(b)(1)(A) requires that sixty (60) days prior to the initiation of a civil action under SDWA §300j-8(a)(1), 42 U.S.C. §1449(a)(1), a citizen must give notice of the intent to sue to the alleged violator and applicable federal and state authorities.

California River Watch (“River Watch”) hereby gives notice to Valley State Prison (“Prison”) and the California Department of Corrections and Rehabilitation (“CDCR”) that following the expiration of sixty (60) days from the date of receipt of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Prison and the CDCR for violations of requirements prescribed by or under the SDWA including non-compliance with Maximum Contaminant Levels established under SDWA §300g-1, 42 U.S.C. §1412 and the Code of Federal Regulations, as exemplified by the incidents of non-compliance identified and outlined in this Notice; and, failure to conduct required sampling with respect to the community water system owned and operated by the Prison and the CDCR.

The SDWA requires that any Notice regarding an alleged violation of any requirement prescribed by or under the Act shall include sufficient information to permit the recipient to identify the following:

1. *The specific requirement alleged to have been violated.*

In addition to the narratives below, River Watch identifies documents obtained from the California Department of Public Health's Division of Drinking Water and Environmental Management identifying the Prison and the CDCR's repeated non-compliance with the SDWA's regulation of the maximum permissible level of contaminants in water delivered to any user of a public water system, and failure to conduct required sampling, all in violation of SDWA §300fg-1, 42 U.S.C. §1412.

2. *The activity alleged to constitute a violation.*

The Prison and the CDCR operate and manage a community water system located in the City of Chowchilla, Madera County, California, which provides drinking water to a population of approximately 4,300 inmates and employees. It is regulated under California Water System No. 2010801 issued by the California Department of Public Health. The facility's water supply is groundwater. River Watch has set forth narratives below describing "positive" detections in the water system above the Maximum Contaminant Levels ("MCLs") for arsenic, acute and total coliforms, in addition to failure by the Prison and the CDCR to conduct required sampling, all occurring during specific reports between 2008 and 2013.

The violations are described in this Notice with particularity, and are based on data detailed in public reports and other documents in the possession of the Prison or the CDCR, or otherwise available to the Prison and the CDCR. River Watch incorporates by reference the records cited below from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The entities responsible for the alleged violation are the Valley State Prison (formerly known as the Valley State Prison for Women,) the California Department of Corrections and Rehabilitation, and those of their operators and employees responsible for compliance with the SDWA and compliance with any applicable state and federal regulations.

4. *The location of the alleged violation.*

The location of the various violations of the SWDA is 21633 Avenue 24, Chowchilla, California 93610.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined records on file with the California Department of Public Health, the Prison and the CDCR. The range of dates covered by this Notice is from December 30, 2008 to December 30, 2013. River Watch will from time to time update this Notice to include violations which occur after the range of dates covered by this Notice. Specific violations occurring on specific dates are listed herein.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is California River Watch, 290 S. Main Street, #817, Sebastopol, CA 95472, referred to throughout this Notice as "River Watch." River Watch is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface water environs of California including, but not limited to its rivers, creeks, streams, wetlands, vernal pools and tributaries. River Watch may be contacted via email: US@ncriverwatch.org or through its attorneys.

River Watch has retained legal counsel with respect to the violations set forth in this Notice. All communications should be addressed to:

Jack Silver, Esq.
Law Offices of Jack Silver
David Weinsoff, Esq.
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Fax. 707-528-8675
Email: lhm28843@sbcglobal.net

STATUTORY BACKGROUND

The SDWA, 42 U.S.C. §§300f to 300j-26, was enacted in 1974 to "assure that water supply systems serving the public meet minimum national standards for protection of public health." Safe Drinking Water Act, Legislative History, H.R. Rep. No. 93-1185 (1974), reprinted at 1974 U.S.C.C.A.N. 6454. The Act authorizes the Environmental Protection Agency ("EPA") to "establish federal standards applicable to public water supplies from harmful contaminants, and establish a joint federal-state system for assuring compliance with these standards and for protecting underground sources of drinking water." *Id.* at 6454-55.

Section 1412(b)(1)(A) of the SDWA requires the EPA to identify contaminants in public water supply systems that may have an adverse human health effect and for which regulation would present a "meaningful opportunity" for reduction of that health risk. 42 U.S.C. §300g-1(b)(1)(A). For each of the contaminants identified under Section 1412(b)(1), Section 1412(b)(1)(E) requires the EPA to establish Maximum Contaminant Level Goals as well as MCLs. 42 U.S.C. §300g-1(b)(1)(E). A violation of the SDWA occurs when testing/monitoring indicates that the level of a contaminant in treated water exceeds the MCL.

Private parties may bring citizens' suits pursuant to 42 U.S.C. §300j-8 to enforce violations of MCLs. River Watch contends the Prison and the CDCR are, among other activities, suppliers of drinking water regulated under the SDWA and, as detailed in the most recent monitoring reports provided by the California Department of Public Health, violating MCLs for arsenic and total coliform.

VIOLATIONS

River Watch contends that between December 30, 2008 and December 30, 2013, the Prison and the CDCR violated the SDWA, the California Health and Safety Code, and the California Code of Regulations by failing to ensure the drinking water supplied to their customers met and continues to meet the standards required by law, including exceeding MCLs for arsenic and total and acute coliforms, and failure to conduct required sampling and notification.

The violations listed below are derived from records publically available, or records in the possession and control of the Prison or the CDCR. Monitoring dates and reported exceedances were taken from Department of Public Health documents and the EPA ECHO database.

VALLEY STATE PRISON WATER SYSTEM

MCL - Arsenic 0.010 ppm

Monitoring Dates and Reported Exceedances
(Quarters out of Compliance):

1st Qtr 2009

1st Qtr 2010

3rd Qtr 2010

4th Qtr 2010

1st Qtr 2011

3rd Qtr 2011

3rd Qtr 2012

4th Qtr 2012

1st Qtr 2013

2nd Qtr 2013

MCL - Total Coliform 5%

Monitoring Dates and Reported Exceedances
(Months Out of Compliance):

2013 - May

Acute MCL - Coliform, Detectable Presence of Fecal Coliform & E. coli Bacteria

Fecal Coliform:

May 21, 2013 - 12 MPN/100 mL

E. coli:

May 21, 2013 - 6.9 MPN/100 mL

**COMPLIANCE WITH MONITORING AND NOTIFICATION
REQUIREMENTS**

Failure to conduct quarterly monitoring. (In violation of Section 64432(2), Title 22, California Code of Regulations.)

4th Qtr 2008

Failure to have contact person with 24 hour availability to receive laboratory results, and failure to require the lab to notify the Department of Public Health in the event of coliform detection if the water supplier cannot be reached within 24 hours. (In violation of Section 64423.1(b), Title 22, California Code of Regulations.)

May 25, 2013

Failure to collect correct number of repeat samples following positive detection of coliform. (In violation of Section 64421, & 64424(b), Title 22, California Code of Regulations.)

May 28, 2013

Failure to take groundwater source samples within 24 hours of being notified of positive coliform detection, as required by the California Groundwater Rule. (Violation of Section 64430, Title 22, California Code of Regulations, and Section 141.402(2) of 40 Code of Federal Regulations.)

May 28, 2013

Failure to notify the Department of Public Health by end of day, or within 24 hours, of discovery of violation. (Violation of Section 64426.1(c), Title 22, California Code of Regulations.)

4th Qtr 2012
May 28, 2013

Failure to have a properly certified chief operator *and* shift operator for the water system. (Violation of Section 63770(a), Title 22, California Code of Regulations.)

As detailed in Department of Public Health Compliance Order No. 03-11-13C-004, issued on June 5, 2013

Failure to have a properly certified chief or shift operator available on site or within one hour's distance of the site. (Violation of Section 64413.7(c), Title 22, California Code of Regulations.)

As detailed in Department of Public Health Compliance Order No. 03-11-13C-004, issued on June 5, 2013

CONCLUSION

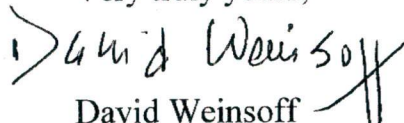
It is presumed that the supplier of water is in continual violation of the applicable standard until constituent measurements are below that applicable standard. Therefore, each day after an exceedance and until the supplier comes into compliance is considered a separate violation of the SDWA and the court can grant relief in the form of requiring that the

drinking water be brought to meet drinking water standards, awarding of attorney fees, and in some cases, penalties.

The importance of quality drinking water cannot be overstated. Maximum Contaminant Levels are set with the biology of healthy young adults in mind. The same standards are set for everyone, including those with compromised systems. River Watch is understandably concerned about the health effects of water systems which continue to provide contaminants above MCLs. Arsenic in drinking water has been linked to adverse health effects, including circulatory problems and increased risk of cancer. Fecal coliform and E. coli bacteria are associated with gastrointestinal problems, and can indicate water contaminated by other pathogens. Most individuals served by the water system operated by the Prison and the CDCR lack other options for drinking water. It is the responsibility of the Prison and the CDCR to conform to the standards set forth in the Act, and to comply with proper monitoring requirements.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter, River Watch has cause to file a citizen's suit under SDWA §1449 against the Prison and the CDCR for the violations identified and described in this Notice. During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified in this Notice. However, if the Prison or the CDCR wish to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,


David Weinsoff

DW:lmh

cc: Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

✓ Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Director/State Public Health Officer
California Department of Public Health
1616 Capitol Avenue, MailStop 7408
Sacramento, CA 95899

Attorney General
Office of the Attorney General
State of California Department of Justice
1300 "I" Street
Sacramento, CA 95814